



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 27, 2004

Ms. Mary E. Reveles  
Assistant County Attorney  
Fort Bend County  
301 Jackson Street, Suite 728  
Richmond, Texas 77469-3108

OR2004-6293

Dear Ms. Reveles:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 206005.

The Fort Bend County Sheriff's Office (the "sheriff") received a request for "all records pertaining to the arrest, detention, medical/psychaitric (sic) treatment, and death of [a named individual]." You state that the sheriff has released some of the requested information to the requestor. You claim that the remaining requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

We begin by noting that some of the submitted documents are not responsive to the instant request for information, as they were created after the date that the department received the request. This ruling does not address the public availability of any information that is not responsive to the request, and the sheriff need not release that information in response to this request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dism'd); Open Records Decision No. 452 at 3 (1986) (governmental body not required to disclose information that did not exist at time request was received).

Next, we note that the submitted information contains a custodial death report. In Open Records Decision No. 521 at 5 (1989), this office concluded that under article 49.18(b) of the Code of Criminal Procedure, in conjunction with a directive issued by the attorney general, section one of a custodial death report filed with this office is public information, but sections two through five of the report are confidential. *See Code Crim. Proc. art. 49.18(b)* (attorney general shall make report, with exception of any portion of report that

attorney general determines is privileged, available to any interested person). Accordingly, the sheriff must release section one of the custodial death report to the requestor. However, because sections two through five of the report are deemed confidential under article 49.18(b), the sheriff must not release the remaining portions of this report to the requestor.

Next, we note that the submitted information contains a *capias*. Article 15.26 of the Code of Criminal Procedure states that an "arrest warrant, and any affidavit presented to the magistrate in support of the issuance of the warrant, is public information." *See* Crim. Proc. Code Art. 45.045 (court may order issuance of *capias pro fine* to arrest defendant who is not in custody when judgment is rendered or if defendant fails to satisfy judgment). Therefore, the *capias* in the submitted information, which we have marked, is public under article 15.26 of the Code of Criminal Procedure must be released to the requestor.

Next, we address the applicability of section 552.101 to portions of the submitted information. Section 552.101 of the Government Code excepts from required public disclosure information that is deemed confidential by law, including information that is made confidential by statute. You state that the submitted information contains medical records, access to which is governed by the Medical Practice Act, (the "MPA"), subtitle B of title 3 of the Occupations Code. Open Records Decision No. 565 at 7 (1990). Section 159.002 of the MPA provides in pertinent part:

(b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.

(c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in Section 159.004 who is acting on the patient's behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

This office has determined that in governing access to a specific subset of information, the MPA prevails over the more general provisions of chapter 552 of the Government Code. *See* Open Records Decision No. 598 (1991). We also have determined that the MPA ordinarily encompasses only records created either by a physician or by someone acting under the supervision of a physician. *See* Open Records Decision Nos. 487 (1987), 370 (1983), 343 (1982). When a patient is deceased, as is the case here, medical records pertaining to the deceased patient may only be released upon the signed consent of the deceased's personal representative. *See* Occ. Code §§ 159.005(a)(5). Medical records must be released upon signed, written consent, provided that the consent specifies (1) the information to be covered by the release, (2) reasons or purposes for the release, and (3) the person to whom the information is to be released. *See* Occ. Code §§ 159.004, .005. The MPA requires that any

subsequent release of medical records be consistent with the purposes for which a governmental body obtained the records. Open Records Decision No. 598 (1991). We have marked the medical records that may be released only as provided under the MPA.

Additionally, section 611.002 of the Health and Safety Code applies to “[c]ommunications between a patient and a professional, [and] records of the identity, diagnosis, evaluation, or treatment of a patient that are created or maintained by a professional.” *See also* Health & Safety Code § 611.001 (defining “patient” and “professional”). Sections 611.004 and 611.0045 provide for access to mental health records only by certain individuals. *See* Open Records Decision No. 565 (1990). We have marked some mental health records that are confidential under section 611.002 and may not be released except in accordance with sections 611.004 and 611.0045 of the Health and Safety Code. Health & Safety Code § 611.002(b); *see id.* §§ 611.004, 611.0045. However, we are unable to determine whether some of the submitted records are mental health records as contemplated by section 611.002. If these records, which we have marked, are records of the identity, diagnosis, evaluation, or treatment of a patient that are created or maintained by a professional, the records are confidential under section 611.002 and the sheriff may not release them except in accordance with sections 611.004 and 611.0045. If the records are not records of the identity, diagnosis, evaluation, or treatment of a patient that are created or maintained by a professional, then this information is not confidential under section 611.002 and must be released to the requestor.<sup>1</sup>

In summary, the sheriff must release section one of the custodial death report, but the sheriff must withhold section two through five of this report. The sheriff must release the capias. The medical records must be released in accordance with the MPA. The mental health records must be released in accordance with chapter 611 of the Health and Safety Code. All remaining information must be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full

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<sup>1</sup>We note that the submitted information also contains information that would normally be excepted from disclosure under section 552.101 in conjunction with the common law right to privacy. However, a person’s common-law right of privacy terminates upon death. *Moore v. Charles B. Pierce Film Enters., Inc.*, 589 S.W.2d 489, 491 (Tex. App.—Texarkana 1979, writ ref’d n.r.e.); *see also Justice v. Belo Broadcasting Corp.*, 472 F. Supp. 145, 146-47 (N.D. Tex. 1979); Attorney General Opinion JM-229 (1984); Open Records Decision No. 272 (1981). Thus, none of the submitted information may be withheld on the basis of the decedent’s common-law right of privacy.

benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

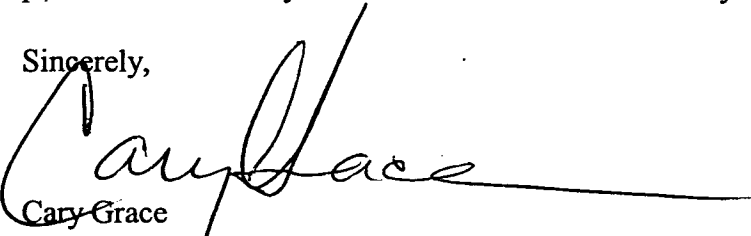
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Cary Grace  
Assistant Attorney General  
Open Records Division

ECG/seg

Ref: ID# 206005

Enc. Submitted documents

c: Mr. Phil Archer  
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(w/o enclosures)